

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ANDRES HERRERA,

Plaintiff,

V.

ALEJANDRO CASTRO,
AC CASTRO TRUCKING, and
ALEJANDRO CASTRO d/b/a
AC CASTRO TRUCKING

Defendants.

Cause No. _____

**DEFENDANTS ALEJANDRO CASTRO, AC CASTRO TRUCKING, &
ALEJANDRO CASTRO d/b/a AC CASTRO TRUCKING'S
NOTICE OF REMOVAL**

To the Honorable United States District Court Judge:

Now come Defendants Alejandro Castro, Individually, AC Castro Trucking, and Alejandro Castro d/b/a AC Castro Trucking, and informs the Court that Alejandro Castro d/b/a AC Castro Trucking has been incorrectly named as “AC Castro Trucking,” and pursuant to 28 U.S.C. §§ 1441 and 1446, file this Notice of Removal to the United States District Court for the Western District of Texas, El Paso Division, and respectfully shows the Court the following:

GROUNDWORK FOR REMOVAL

1. This removal is pursuant to 28 U.S.C. §§ 1441, 1446 and 1332(a)(1). This Court has diversity jurisdiction based on 28 U.S.C. § 1332(a)(1) in that “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.”

2. Plaintiff seeks recovery of damages in the form of “monetary relief aggregating more than \$1,000,000.00, excluding costs and pre-judgment interest.” (**Ex. 2, at p. 1**). Thus, the amount in controversy is greater than \$75,000.00. *See* 28 U.S.C. § 1446(c)(2).

3. Additionally, there is complete diversity of the parties because Plaintiff has alleged that he is a citizen of the State of Texas. (**Ex. 2, at p. 1**). Defendant Alejandro Castro is domiciled in Imperial County, California, and is thus a citizen of the State of California. Defendant Alejandro Castro d/b/a AC Castro Trucking is a sole proprietorship owned by Defendant Alejandro Castro, a California citizen. Thus, Alejandro Castro d/b/a AC Castro Trucking (hereinafter referred to as “Castro Trucking”) is a citizen of the State of California. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, (5th Cir. 2008)(citing *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990)(holding that the citizenship of an unincorporated entity or association is based upon the citizenship of each of its members)). Because Plaintiff is a citizen of Texas, and all named Defendants are citizens of California, there is complete diversity among the parties.

STATE PROCEEDING

4. On January 12, 2021, Plaintiff Andres Herrera filed his Original Petition styled *Andres Herrera v. Alejandro Castro, AC Castro Trucking, Alejandro Castro d/b/a AC Castro Trucking*; in the 41st Judicial District Court in El Paso County, Texas, originally pending as Cause No. 2021-DCV-0120. (**Ex. 2**).

5. Defendant Alejandro Castro, sole proprietor of Castro Trucking, was served with process on February 1, 2021. (**Ex. 3, at p. 2**).

6. Plaintiff’s Original Petition seeks damages for personal injuries and property damage that he allegedly suffered after a motor vehicle accident that occurred on April 20, 2019 in El Paso County, Texas. Plaintiff’s Original Petition alleges that Defendant Alejandro Castro

was operating a tractor-trailer on Interstate 10 East near mile post 21 when a mechanical part detached from the vehicle and fell in the lanes of traffic. Plaintiff allegedly collided with the mechanical part. Plaintiff alleges that his injuries and the property damage to his vehicle were proximately caused by the negligence of Defendants Alejandro Castro and Castro Trucking. (**Ex. 2, pp. 2-3**).

7. Plaintiff has asserted ordinary negligence claims against Defendants Alejandro Castro and Castro Trucking. Plaintiff has also asserted a negligent entrustment claim against Castro Trucking. (**Ex. 2, p. 3-4**).

8. Defendants file this Notice of Removal within 30 days of service upon Defendants. Thus, it this removal is timely filed under 28 U.S.C. § 1446(b). *See Murphy Bros. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999) (notice of removal is timely under 28 U.S.C. § 1446(b) if filed within 30 days after service of the complaint). Given that all named Defendants are treated as one in the same under Texas law, (*see CA Partners v. Spears*, 274 S.W.3d 51, 69-71 (Tex. App. Ct. – Houston [14th Dist.] 2008) (explaining that Texas law treats the sole proprietor and the sole proprietorship as one and the same person)), consent to removal is unanimous among the Defendants.

VENUE

9. Venue upon removal is proper in the United States District Court for the Western District of Texas, El Paso Division, which is the district and division embracing the state court where such action is pending. *See* 28 U.S.C. § 124(d)(3).

10. Pursuant to 28 U.S.C. § 1446, documents filed in the state court and served upon Defendants in this action are attached with this Notice of Removal and are incorporated herein by reference. (**Exs. 2-6**).

11. Defendants will promptly file a copy of this Notice of Removal and its corresponding attachments with the clerk of the state court where the suit has been pending in accordance with 28 U.S.C. § 1446(d). (Ex. 9).

JURY DEMAND

12. In the state court, Plaintiff demanded a trial by jury. (Ex. 2, p. 6-7).

PRAAYER

13. Accordingly, Defendants Alejandro Castro and Alejandro Castro d/b/a AC Castro Trucking pray that this Court accept its Notice of Removal for filing in accordance with the provisions of 28 U.S.C. § 1441, *et. seq.*, and for such further relief, legal or equitable, general or special, to which Defendant may be justly entitled.

Respectfully submitted,

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Date: March 3, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the above date, a true and correct copy of the foregoing instrument has been served electronically to the under listed attorney(s) through the electronic filing manager:

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